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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re Edward C., a Person Coming  
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

EDWARD C.,

Defendant and Appellant.

D054495

(Super. Ct. No. J211922)

APPEAL from a judgment of the Superior Court of San Diego County, Carolyn M.

Caietti, Judge. Affirmed.

The juvenile court declared Edward C. a ward of the court (Welf. & Inst. Code, § 602) after he admitted to various counts of assault, battery, vandalism, and criminal threats.

Edward appeals the probation condition requiring him to obtain approval from the probation

officer to change his residence, asserting that it is overbroad and therefore constitutionally invalid. We disagree and affirm the judgment.

## FACTUAL AND PROCEDURAL BACKGROUND

Between July and September of 2007, Edward was involved in a series of offenses including vandalism and battery and assault of his mother. The district attorney filed a juvenile wardship petition charging Edward with committing assault with a deadly weapon, criminal threats, misdemeanor battery, one felony count of vandalism and two misdemeanor counts of vandalism.

Edward admitted the allegations at the adjudication hearing. The juvenile court declared him a ward and placed him in his mother's custody until the disposition hearing. A bench warrant was issued after Edward failed to appear at the hearing. Nearly 11 months later, Edward appeared on the bench warrant and was detained pending further proceedings. Edward was committed to Camp Barrett for a period not to exceed 270 days, after which he would be placed under the custody and care of his mother. The juvenile court imposed certain probation conditions, including that Edward obtain approval from his probation officer before changing his residence.

## DISCUSSION

Edward contends that the probation condition is facially unconstitutional because it is overbroad and impedes upon his rights to intrastate travel and association. As a preliminary matter, we reject the People's assertion that Edward forfeited his right to challenge the probation condition because he failed to object to the condition in juvenile court. To the extent that Edward asserts a claim based purely on questions of law that can be resolved

without reference to the sentencing record, it may be raised for the first time on appeal. (*In re Sheena K.* (2007) 40 Cal.4th 875, 889.)

Having determined that Edward did not forfeit his constitutional challenge, we now consider whether the probation condition is overbroad and thus constitutionally invalid. Because Edward's challenge presents a question of law, we apply the de novo standard of review. (*In re Sheena K.*, *supra*, 40 Cal.4th at p. 885; *People v. Aldridge* (1984) 35 Cal.3d 473, 477.)

The juvenile court has broad discretion in determining whether a probation condition is appropriate. (*People v. Olguin* (2008) 45 Cal.4th 375, 379.) A probation condition will be held valid unless (1) it has no relationship to the crime of which the offender was convicted, (2) is related to conduct which is not in itself criminal, and (3) forbids conduct which is not reasonably related to future criminality. (*People v. Lent* (1975) 15 Cal.3d 481, 486.) Conversely, a probation condition which forbids conduct that is not itself criminal is valid if that conduct is reasonably related to future criminality. (*Ibid.*)

In an adult probation setting, a condition is overbroad if it unduly restricts the exercise of a constitutional right. (*In re Byron B.* (2004) 119 Cal.App.4th 1013, 1016.) A probation condition that infringes on a constitutional right must be reasonably related to the compelling state interests of reformation and rehabilitation. (*People v. Delvalle* (1994) 26 Cal.App.4th 869, 879.)

The juvenile court may impose reasonable conditions that will enhance the reformation and rehabilitation of the minor. (Welf. & Inst. Code, § 730 subd. (b).) Although minors possess constitutional rights, it is well established that the liberty interest of a minor

is not coextensive with that of an adult. (*In re Roger S.* (1977) 19 Cal.3d 921, 928.) The power of the state to control the conduct of minors reaches beyond the scope of its authority over adults because minors are considered to be in need of more guidance and their constitutional rights are deemed to be more restricted. (*Ibid.*) We recognize that some conditions of probation that would otherwise be unconstitutional for an adult probationer may be permissible for a minor under the supervision of the juvenile court. (See *In re Byron B.*, *supra*, 119 Cal.App.4th at p. 1015.)

Edward relies on *People v. Bauer* (1989) 211 Cal.App.3d 937 to support his argument that the probation condition is overbroad. In that case, the appellate court examined the constitutionality of a probation condition requiring an adult defendant to obtain his probation officer's approval of his residence. (*Id.* at p. 940.) The *Bauer* court concluded that this broad power over defendant's living situation was improper because nothing about the nature of the defendant's crime or the likelihood of future criminality implicated the defendant's place of residence. (*Id.* at p. 944.)

Although the condition in this matter is similar to the condition in *Bauer*, the defendant in that case was an adult who, in the absence of his probation, could live anywhere he chose. (*People v. Bauer*, *supra*, 211 Cal.App.3d at pp. 940-941.) Courts, however, have long recognized the difference between the judicial role in juvenile court and "adult" court. The state also has broader discretion to impose conditions on a minor that may otherwise be impermissible for an adult probationer. (*In re Roger S.*, *supra*, 19 Cal.3d at p. 928; *In re Byron B.*, *supra*, 119 Cal.App.4th at p. 1015.) Since the juvenile court has broader discretion, this court will uphold the condition as long as it is constitutionally valid.

Edward's place of residence plays an important role in his successful rehabilitation and avoidance of future criminality. (See *People v. Robinson* (1988) 199 Cal.App.3d 816, 818.) The present record shows that Edward's misconduct has been influenced by another person. Edward followed his previous roommate out of state, evading officials for almost an entire year. He committed several of his offenses alongside his roommate. The assault on his mother occurred after an exchange between his mother and the roommate. Sharing his residence with someone who would encourage criminal behavior would put Edward at risk of committing similar crimes. As a result, there is concern for his possible choice in future cohabitants. Under the supervision of the probation officer, he would be influenced to remain in a place of residency that would prevent future criminality.

Edward's current placement in his mother's home aids his rehabilitation as she shares Edward's goal of completing his education program and positively contributing to society. Her support and guidance will help Edward avoid negative influences from alternative living environments. In addition, she is aware of a previous head injury that impacts Edward's thought processes. She is sympathetic and experienced in caring for the specific needs of her son. In this environment, Edward is more able to focus on his school work and is therefore more likely to finish his overall education program. This is an important part of Edward's rehabilitation as a minor. Thus, the probation condition is reasonably related to preventing future criminality by ensuring proper parental control and support.

Although Edward does not suggest how the condition could be changed to be less restrictive, the People assert that a lesser restrictive condition would be insufficient to serve the goals of rehabilitation and reformation. We agree. The People correctly note that a

probation condition requiring that Edward simply give notice to his probation officer of a change of residence would prevent the probation officer from properly supervising Edward. The probation officer would lack the power to prevent Edward from residing in an environment that inhibits reformation and rehabilitation. This would vitiate the goal of providing proper supervision toward rehabilitation.

Although Edward does not specify how the condition is overbroad, we will examine possible arguments on this point. Courts have considered whether to strike down a probation condition based on the limitations it imposes on the probationer's activities. (See *In re Antonio R.* (2000) 78 Cal.App.4th 937, 942.) Here, the probation condition is not so overbroad that it limits Edward's social, work, or academic life. Edward may be friends with anyone he chooses, and work or attend school at any location within the parameters of other probation conditions. Furthermore, the probation condition does not create an undue burden that is unclear to the probationer. Edward knows exactly what he has to do in order to proceed with a change of residence.

Edward contends that the probation condition impinges on his constitutional right to intrastate travel and association. We acknowledge these rights, but note the probation condition at issue does not impinge upon them. The probation condition requires that Edward obtain approval before he changes residence, not when traveling intrastate. Another probation condition prohibits him from leaving San Diego County without the permission of the probation officer. However, Edward did not appeal this condition. Furthermore, the probation condition does not place limits on his freedom of association. Other than the

probation condition limiting his association with the victims and his codefendant (which he did not appeal), Edward may associate with anyone he desires.

The condition is narrowly tailored to the state interests of rehabilitation and reformation. It does not require Edward to obtain approval for general association with individuals, nor does it prevent him from traveling. Given the latitude the juvenile court has when imposing probation conditions and because the condition is tailored to minimize intrusion into Edward's constitutional rights, we conclude the probation condition is not overbroad and is constitutionally valid.

#### DISPOSITION

The judgment is affirmed.

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McINTYRE, J.

WE CONCUR:

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McCONNELL, P. J.

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McDONALD, J.